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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10 **SAN DIEGO DIVISION**

11 **GABRIEL TECHNOLOGIES**  
12 **CORPORATION and TRACE**  
13 **TECHNOLOGIES, LLC,**

Plaintiffs,

14 vs.

15 **QUALCOMM INCORPORATED,**  
16 **SNAPTRACK, INC., and NORMAN**  
17 **KRASNER,**

Defendants.

**CIVIL ACTION NO. 3:08-cv-01992-MMA-POR**

**NOTICE OF MOTION AND MOTION TO**  
**WITHDRAW AS ATTORNEYS OF RECORD**  
**FOR PLAINTIFFS GABRIEL**  
**TECHNOLOGIES CORPORATION AND**  
**TRACE TECHNOLOGIES, LLC;**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT THEREOF**

**DATE: January 25, 2010**

**TIME: 2:30 p.m.**

**COURTROOM: 5**

**DEMAND FOR JURY TRIAL**

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 25, 2010, or soon thereafter as the matter may  
3 be heard, in Courtroom 5 of the above entitled Court located at 940 Front Street, San Diego, CA  
4 92101. The law firm of Munck Carter, LLP and Jamil N. Alibhai (collectively, "Munck Carter")  
5 seek leave of Court to withdraw as counsel of record for Plaintiffs Gabriel Technologies  
6 Corporation ("Gabriel") and Trace Technologies, LLC ("Trace").

7 This motion is based upon this Notice, the Memorandum of Points and Authorities  
8 attached hereto, the pleadings, records and files herein, and such other oral or other documentary  
9 evidence as may be presented at the hearing of this motion.

10 Dated: December 22, 2009

Respectfully submitted,

11 By: /s/ Jamil N. Alibhai

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25 **COUNSEL FOR PLAINTIFFS GABRIEL**  
26 **TECHNOLOGIES CORPORATION AND**  
27 **TRACE TECHNOLOGIES, LLC**  
28

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 The law firm of Munck Carter, LLP and Jamil N. Alibhai (collectively, “Munck Carter”) seek leave of Court to withdraw as counsel of record for Plaintiffs Gabriel Technologies Corporation (“Gabriel”) and Trace Technologies, LLC’s (“Trace”) for the reasons set forth below.

7 **I.**

8 **ARGUMENT AND AUTHORITIES**

9 This Court’s “decision to grant or deny counsel’s motion to withdraw is committed to the discretion of the trial court.” *Beard v. Shuttermart of Cal.*, 2008 WL 410694, \*2 (S.D. Cal. Feb. 13, 2008). In ruling on a motion to withdraw as counsel, the following factors are considered: “(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case.” *Id.* (citations omitted). Here, Munck Carter can demonstrate good cause under several recognized bases for withdrawal and that Munck Carter’s withdrawal will not prejudice any of the parties or harm the administration of justice. Further, because this case is in its infancy and Defendants have yet to even file an answer, Plaintiffs have ample opportunity to substitute counsel without delaying the proceedings in this case.

20 **A. Good Cause for Withdrawal Exists Under Both the Mandatory and Permissive Bases of the California Rules**

21 To determine when withdrawal is appropriate, the Southern District of California has incorporated the California Rules of Professional Conduct (the “California Rules”). *Pacific Rollforming, LLC v. Trakloc Intern.*, 2008 WL 4682239, \*1 (S.D. Cal. Oct. 21, 2008). The California Rules set forth both mandatory and permissive bases for withdrawal by an attorney. By way of example, the following permissive bases, among others, under California Rule 3-700 require Munck Carter’s withdrawal as counsel:

- 1 • “The client by other conduct renders it unreasonably difficult for the member to
- 2 carry out the employment effectively.” 3-700(C)(1)(d)
- 3 • “The client breaches an agreement or obligation to the member as to the expenses
- 4 or fees.” 3-700(C)(1)(f)
- 5 • “The member believes in good faith, in a proceeding pending before a tribunal,
- 6 that the tribunal will find the existence of other good cause for withdrawal.” 3-700(C)(6)

7 It is well established that “[c]ounsel in this Court may withdraw as the attorney of record  
8 if the client’s ‘conduct renders it unreasonably difficult for the member to carry out the  
9 employment effectively.’” *Beard v. Shuttermart of Cal.*, 2008 WL 410694, \*2 (S.D. Cal. Feb.  
10 13, 2008) (quoting Rule 3-700(C)(1)(d)). In evaluating similar motions to withdraw as counsel,  
11 this Court has recognized that “[u]nder the State Bar of California Rules of Professional  
12 Conduct, attorneys are bound to preserve client confidences when seeking withdrawal, if  
13 disclosing them would prejudice the client or violate the counsel’s duty of confidentiality. In light  
14 of these limitations, counsel often is not able to discuss in detail the reasons for withdrawal.”  
15 *Pacific Rollforming, LLC v. Trakloc Intern.*, 2008 WL 4682239, \*1 n.1 (S.D. Cal. Oct. 21, 2008)  
16 (citing Cal. R. Prof. Conduct 3-700(A)(2)). Based on the enumerated sections of the California  
17 Rules set forth above, Munck Carter submits that its withdrawal from this case is appropriate. If  
18 the Court so requires, Munck Carter is willing to provide additional information about the  
19 reasons for its withdrawal to the Court *in camera*.

## 20 **B. Compliance With the Notice Provisions**

21 In addition, counsel has complied with Southern District of California Local Rule  
22 83.3(g), which requires that “[a] notice of motion to withdraw as attorney of record must be  
23 served on the adverse party and on the moving attorney’s client” and “[a] declaration pertaining  
24 to such service must be filed.” *Id.* A copy of Munck Carter’s motion has been served on counsel  
25 for defendants and on the CEO and General Counsel of Gabriel, George Tingo. *See* Alibhai  
26 Declaration ¶ 2. In addition, counsel for defendants is not opposed to the relief requested. *See*  
27 Alibhai Declaration ¶ 3.

1 **C. No Prejudice**

2 Generally, “[a]n attorney may not withdraw until he or she ‘has taken reasonable steps to  
3 avoid reasonably foreseeable prejudice to the rights of the client . . . .’” *Pacific Rollforming, LLC*  
4 *v. Trakloc Intern.*, 2008 WL 4682239, \*1 (S.D. Cal. Oct. 21, 2008) (citing Cal. R. Prof. Conduct  
5 3-100(A)(2)). In this case, however, the proceedings are in their infancy. The Court has not  
6 issued a Scheduling Order, the defendants have not filed an answer, and no trial date is set.  
7 Thus, there is no prejudice. *See Pacific Rollforming, LLC v. Trakloc Intern.*, 2008 WL 4682239,  
8 \*1 (S.D. Cal. Oct. 21, 2008) (citing Cal. R. Prof. Conduct 3-100(A)(2)) (“At the time of the  
9 filing of the application there were no hearings or due dates apparent from the court's docket  
10 necessitating Clients' action. Accordingly, the counsel took sufficient steps to avoid reasonably  
11 foreseeable prejudice to Clients.”); *Lewis v. Nevada County*, 2009 WL 463510, \*1 (E.D. Cal.  
12 Feb. 23, 2009) (“Here, plaintiff will not suffer injustice or delay if counsel is permitted to  
13 withdraw. Trial in this matter is set for June 8, 2010. Plaintiff has sufficient time to retain  
14 substitute counsel, should he wish to, and for that lawyer to become familiar with the case and  
15 relevant issues.”).

16 **II.**

17 **CONCLUSION**

18 For all of the foregoing reasons, Munck Carter respectfully requests that this Court enter  
19 an order granting the withdrawal of Munck Carter as attorneys of record for Plaintiffs in this  
20 matter and for any and all relief to which Munck Carter is entitled.  
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1 Dated: December 22, 2009

Respectfully submitted,

3 By: /s/ Jamil N. Alibhai

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16 **COUNSEL FOR PLAINTIFFS GABRIEL**  
17 **TECHNOLOGIES CORPORATION AND**  
18 **TRACE TECHNOLOGIES, LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Fed. R. Civ. P. 5. on December 22, 2009.

A copy of this document was served via U.S. Mail and electronic mail to the below address on December 22, 2009:

George Tingo  
CEO and General Counsel  
Gabriel Technologies Corporation  
740 North 129th Street, Suite 105  
Omaha, NE 68154  
gtingo@aol.com

*/s/ Jamil N. Alibhai*  
Jamil N. Alibhai